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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
DIVISION OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 2.106 of the ) ET Docket No. 95-18  
Commission's Rules to Allocate ) RM-7927  
Spectrum at 2 GHz for Use ) PP-28  
by the Mobile-Satellite Service )

REPLY COMMENTS OF THE MSS COALITION

Celsat America, Inc. ("Celsat"), COMSAT Corporation ("COMSAT"), Hughes Space and Communications International ("Hughes"), ICO Global Communications ("ICO"), and Personal Communications Satellite Corporation ("PCSAT")<sup>1</sup> (collectively, the "MSS Coalition"), by their attorneys hereby reply to the comments filed on June 23, 1997 in response to the Federal Communications Commission's ("FCC" or "Commission") March 14, 1997 Further Notice of Proposed Rulemaking ("Further Notice")<sup>2</sup> in the above-referenced proceeding.

INTRODUCTION

Recent filings with the Commission indicate that a growing number of parties -- both within and outside the satellite industry -- share the MSS Coalition's concerns regarding the damaging domestic and international implications of the Commission's order ("Order") requiring Mobile Satellite Service ("MSS") operators at 2 GHz to pay for the relocation of

<sup>1</sup> PCSAT is a wholly owned subsidiary of American Mobile Satellite Corporation.

<sup>2</sup> *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket 95-18, FCC No. 97-93 (Mar. 14, 1997) ("Further Notice" or "Order").

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incumbent Broadcast Auxiliary Service ("BAS") and Fixed Service ("FS") operators. For example, the Satellite Industry Association, in a letter filed earlier this month with the Commission, urged the Commission "to seek a better approach that will not risk having the contradictory effect of making spectrum available to new satellite services only on economic terms that would make their implementation much more difficult or impossible."<sup>3</sup> The Government of the United Kingdom, in comments filed in this proceeding, stated that it is concerned that the Commission's Order "will act as a serious barrier to entry to [the MSS] market in the U.S." and "may also be seen as encouraging other countries to breach the intention and spirit of the negotiations in the WTO Group on Basic Telecommunications with regard to avoiding technical barriers to entry."<sup>4</sup>

The European Conference of Postal and Telecommunications Administrations ("CEPT") recently released the European Radiocommunications Committee ("ERC") decision on transitional arrangements for FS and MSS at 2 GHz. This CEPT ERC decision does not contemplate the payment of FS incumbents' relocation fees by MSS operators in Europe.<sup>5</sup>

These recent statements support the MSS Coalition's contention that the regulatory approach adopted by the Commission in its Order disserves the public interest. The MSS

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<sup>3</sup> Letter from C. Mowry, Director, Satellite Industry Association, to W. Caton, Secretary, Federal Communications Commission (July 2, 1997) at 2.

<sup>4</sup> Comments of the United Kingdom Government at 2. The Commission's Order also would appear to be inconsistent with Congressman Billy Tauzin's recent call for a "free trade zone in outer space." *See Broadcasting & Cable*, July 14, 1997 at 28.

<sup>5</sup> European Radiocommunications Committee Decision on transitional arrangements for the Fixed Service and the Mobile-Satellite Service in the bands 1980-2010 MHz and 2170-2200 MHz in order to facilitate the harmonized introduction and development of Satellite Personal Communications Services (ERC/DEC/(97)04), June 30, 1997.

Coalition therefore continues to urge the Commission to grant its petition for partial reconsideration ("Petition") of the Order.<sup>6</sup> Accordingly, we address herein only those further comments that relate to aspects of the regulatory framework proposed by the MSS Coalition.

**I. THE COMMISSION SHOULD ADOPT A SUNSET DATE OF JANUARY 1, 2005**

The MSS Coalition continues to support fully the adoption of a sunset period ending on January 1, 2005, after which FS incumbents must relocate at their own expense if requested to do so by an MSS operator at 2 GHz. Other commenters also recognize the need for and appropriateness of a sunset. BellSouth Corporation ("BellSouth"), for example, itself an FS incumbent at 2 GHz, advocates the adoption of a sunset.<sup>7</sup> As BellSouth acknowledges, "existing 2 GHz equipment should be completely amortized after ten years and the useful life of such equipment is only fifteen years."<sup>8</sup> Moreover, BellSouth recognizes that FS incumbents

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<sup>6</sup> Specifically, the MSS Coalition has asked the Commission to reconsider its decision (1) to provide BAS licensees with 105 MHz at 2025-2130 MHz rather than a more spectrally efficient allocation of 85 MHz at 2025-2110 MHz, and (2) to require MSS operators to pay incumbent FS and BAS operators' relocation expenses. See MSS Coalition Petition for Partial Reconsideration ("Petition") at 2. As the MSS Coalition previously noted, the consensus view within the satellite industry is that the Petition is meritorious and should be granted. MSS Coalition Reply to Oppositions to Petition for Partial Reconsideration at 1.

<sup>7</sup> BellSouth Comments at 9-10. Unlike the MSS Coalition, which advocates the adoption of a specific sunset date of January 1, 2005, BellSouth proposes a sunset 10 years after the first MSS license is granted. *Id.* The MSS Coalition notes that it is not only the length of a sunset period that is important, but also when the period starts to run. Because, as BellSouth recognizes, 2 GHz incumbents have been on notice since 1992 that they eventually would have to vacate the spectrum designated for emerging technologies, BellSouth Comments at 9, the Coalition's sunset date will afford 2 GHz incumbents with a minimum of 13 years in which to plan for their relocation and provides certainty for MSS operators to invest in their systems. A 10-year sunset that commences after a yet to be determined license grant date will afford FS incumbents more than 15 years to relocate their systems and will not provide MSS operators with the requisite certainty. Accordingly, the MSS Coalition opposes the start date of BellSouth's proposed sunset provision.

<sup>8</sup> *Id.* at 9.

at 2 GHz “have been on notice since 1992 that the 2 GHz band has been designated for use by emerging technologies and that incumbents will be forced to vacate the spectrum . . . .”<sup>9</sup>

Accordingly, BellSouth concludes that a sunset would not “significantly” harm FS incumbents.<sup>10</sup> Likewise, TRW Inc. advocates the adoption of a sunset “to limit the scope of the entitlement to ‘all-expenses-paid’ relocation.”<sup>11</sup>

Rather than promote the dire results predicted by some other FS incumbents, a sunset ending with a date certain relative to when the FS licensees were placed on notice will serve only to afford MSS operators the requisite certainty to allow them to invest the huge sums required to launch and operate their systems. As the Commission recognized when it adopted a sunset in the PCS relocation proceeding, a sunset strikes a “fair balance” between the needs and interests of both incumbent FS licensees who are entitled to relocation and operators who need to use the spectrum to provide the new service.<sup>12</sup> Not only did the Commission find that a specific sunset termination date provides certainty to new licensees, it also found that a sunset gives incumbent FS licensees sufficient time to plan for relocation.<sup>13</sup> The Commission also recognized that a sunset may provide an incentive for incumbents to relocate to other bands when replacing existing equipment at the end of its life cycle.<sup>14</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* This is particularly the case because, as the MSS Coalition has consistently advocated, FS incumbents can share the MSS downlink band for a transitional period.

<sup>11</sup> TRW Inc. Comments at 6.

<sup>12</sup> *Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, 11 FCC Rcd 8825, at 8856-8860 (1996).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Contrary to the assertions of some commenters in this proceeding, the adoption of a sunset will not encourage MSS operators to “wait out” FS licensees,<sup>15</sup> nor will it discourage MSS/FS sharing.<sup>16</sup> It is in MSS operators’ best interests to get their systems up and running as soon as possible in order to serve their customers’ communications needs. If MSS is to become a viable competitive mobile communications service and live up to its promise of providing access to communications in rural and remote underserved areas (and indeed, if MSS is to be as profitable as claimed by commenters in this proceeding),<sup>17</sup> MSS operators cannot, and have no incentive to, wait until the end of a sunset (of whatever length) to operate their systems. For these reasons, the adoption of a sunset also will not discourage MSS/FS sharing. The MSS industry simply cannot afford to wait out a sunset period to avoid efforts to share spectrum with FS incumbents, particularly because, as the MSS Coalition has shown, sharing between MSS and FS will be possible in most instances.

## **II. THE COMMISSION SHOULD SEEK INFORMATION FROM BROADCASTERS CONCERNING THEIR SPECTRUM NEEDS**

In its Further Comments, Comsearch states that it “believe(s) that sharing may be possible between the BAS fixed links and FS in the 2110-2130 MHz band through the use of existing Part 101 interference analysis and prior coordination procedures.”<sup>18</sup> Comsearch adds,

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<sup>15</sup> AAR Comments at 7; API Comments at 9.

<sup>16</sup> AAR Comments at 7-8. Celsat notes, as it has in previous rulemaking proceedings before the Commission, that it can operate in the 1990-2025 MHz and 2165-2200 MHz bands without causing harmful interference either to BAS/ENG facilities or FS facilities.

<sup>17</sup> See, e.g., API Comments at 8.

<sup>18</sup> Comsearch Comments at 2.

however, that “[m]ore comprehensive statistics on the use of BAS services nationwide would be required to make an accurate assessment of this type of spectrum sharing . . . .”<sup>19</sup> Although the MSS Coalition does not agree that the 2110-2130 MHz band should be allocated to BAS licensees, even on a shared basis with FS incumbents, Comsearch’s comments reinforce a point previously made by the MSS Coalition: the Commission lacks sufficient factual information in the record concerning the spectrum utilization of BAS operators to make informed decisions concerning spectrum allocation between BAS and MSS.<sup>20</sup>

The broadcasters concede that they themselves lack critical information concerning BAS operations. In Further Comments, the broadcasters state that “[a] complete and accurate list of all BAS equipment nationwide does not currently exist.”<sup>21</sup> In furtherance of the broadcasters’ proposal to collectively negotiate relocation costs with MSS operators, the broadcasters voluntarily have begun “to create a comprehensive database of all BAS equipment in the country.”<sup>22</sup>

The broadcasters’ data collection efforts, although encouraging, do not, however, go far enough. As the MSS Coalition explained in its Petition, the Commission, in adopting its Order, lacked (and continues to lack) critical information in the record regarding actual BAS spectrum utilization and the feasibility of broadcasters employing digital technology in markets where BAS spectrum demand is highest.<sup>23</sup> The MSS Coalition further advocated the

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> *See* Petition at 3-9.

<sup>21</sup> MSTV Comments at 10.

<sup>22</sup> *Id.* at 11.

<sup>23</sup> Petition at 3-9.

accommodation of BAS operations in 85 MHz of spectrum at 2025-2110 MHz.<sup>24</sup> The Spectrum & Orbit Utilization Section of the Satellite Communications Division of the Telecommunications Industry Association (“TIA-SOUS”) agrees that accommodating BAS in 85 MHz is a possibility that should be explored by the Commission. TIA-SOUS states that the Commission’s recently established rapid timetable for the broadcast industry’s conversion to digital “raises the question as to whether the broadcast industry could use digital technology for ENG at an early date to increase spectrum efficiency within its existing allocation to gain sufficient BAS/ENG channels without the need for the additional spectrum at 2110-2130 MHz.”<sup>25</sup>

As the MSS Coalition further contended in its Petition, the tenets of reasoned decisionmaking required the Commission to have obtained this critical information *prior* to making decisions with respect to spectrum allocation between BAS and MSS<sup>26</sup> -- decisions that may cost the MSS industry as much as \$3 billion in unnecessary relocation expenses.<sup>27</sup> Accordingly, as the MSS Coalition suggested in its Further Comments, the Commission immediately should request from *all* BAS licensees information regarding available options for accommodating BAS operations in 85 MHz of spectrum at 2025-2110 MHz.<sup>28</sup> The

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<sup>24</sup> *Id.* at 18-19.

<sup>25</sup> TIA-SOUS Comments at 5.

<sup>26</sup> Petition at 7.

<sup>27</sup> *See id.* at 24 and n.65.

<sup>28</sup> *See* MSS Coalition Further Comments at 3-5. The broadcasters earlier claimed that information provided regarding the spectrum needs of the top 25 markets is sufficient because “BAS is a nationwide service.” MSTV Opposition to Petition for Partial Reconsideration at 8. They now concede, however, that “BAS service requirements are largely a function of local circumstances.” Comments of California Oregon Broadcasting, Inc. at 3. As such, information

Commission's request should elicit information concerning, for example, the number of ENG transmitters and/or receive sites operated by each television station licensee, the number of stations that have been assigned to use ENG channels 1 (1990-2008 MHz) and 2 (2008-2025 MHz) by local frequency coordinators and the level of that use, and the number and location of ENG receive sites that employ electronically tuned receiver front-ends or that use surface acoustic wave filters in the intermediate frequency stage of the receivers.

As the MSS Coalition previously noted, because each broadcaster is in a unique position to know its individual actual spectrum utilization, only the broadcasters can supply the Commission with the information the Commission needs.<sup>29</sup> Given that the broadcasters have indicated a willingness to collect certain BAS related information, it should not be a significant burden for the broadcasters to conduct a more comprehensive data collection to permit informed Commission decisionmaking to proceed.

### **III. THE COMMISSION SHOULD ISSUE NEW BAS LICENSES IN THE 1990-2025 MHz BAND SUBJECT TO A CONDITION REQUIRING RELOCATION AS OF JANUARY 1, 2000 AT THE BAS LICENSEES' OWN EXPENSE**

In its Further Comments, the MSS Coalition urged the Commission to facilitate the transition of BAS licensees out of the 1990-2025 MHz band by issuing new BAS licenses in this band subject to a condition requiring relocation as of January 1, 2000.<sup>30</sup> The broadcasters themselves -- as well as other parties -- agree that such a conditional grant would serve the

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should be requested from all BAS licensees, as well as from local spectrum coordinators. In addition, the Commission should moderate a meeting between MSS and BAS operators similar to the leadership role assumed by the Commission in overseeing the implementation of 800 number portability.

<sup>29</sup> See Petition at n.13.

<sup>30</sup> MSS Coalition Further Comments at 16.



public interest.<sup>31</sup> The Commission should therefore condition new BAS licenses with the requirement that the licensee relocate by January 1, 2000 at the licensee's expense.<sup>32</sup>

### CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in the MSS Coalition's Further Comments, the Commission should (1) adopt a sunset date of January 1, 2005, after which FS licensees at 2 GHz must relocate at their own expense if requested to do so by an MSS operator, (2) seek information from broadcasters concerning the broadcast industry's actual spectrum utilization and (3) issue new BAS licenses<sup>33</sup> in the 1990-2025 MHz band subject to a condition requiring relocation as of January 1, 2000 at the BAS licensees' own expense.

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<sup>31</sup> MSTV Comments at 13 (does not oppose subjecting "all BAS licenses issued after the completion of this proceeding to condition requiring relocation to be at such BAS licensees' own expense"). *See also* SBE Comments at 4 (does not object to "newcomer fixed link 2 GHz BAS stations authorized after the effective date of a 2nd R&O to this FNPRM, [to] bear the condition that such newcomer stations would not be subject to reimbursement costs").

<sup>32</sup> Because the first notice of proposed rulemaking ("NPRM") in this proceeding released on January 31, 1995, put new BAS licensees on notice of a proposed BAS rechannelization plan, the MSS Coalition proposes that any new BAS licenses issued after the date of the first NPRM be subject to this condition.

<sup>33</sup> *See supra* note 32.

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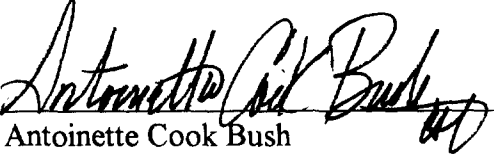
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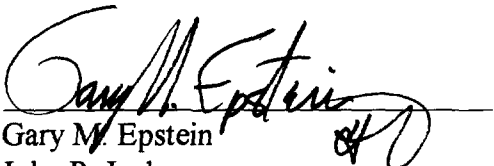
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## **CERTIFICATE OF SERVICE**

I, Kimberly E. Thomas, do hereby certify that the foregoing **REPLY COMMENTS OF THE MSS COALITION** was hand delivered on this 21st day of July, to the following:

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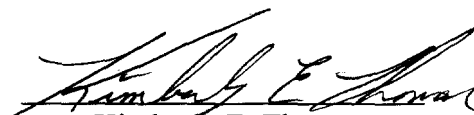
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